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IN THE

Supreme Court of the United States

OCTOBER 1969 TERM

No. 661

HELLENIC LINES LIMITED

and

UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

AMICUS CURIAE MOTION AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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HELLENIC LINES LIMITED

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Respondent.

MOTION FOR LEAVE TO FILE THE ACCOMPANYING BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Statement of Interest of *Amicus Curiae*

John R. Sheneman of Zock, Petrie, Sheneman & Reid, New York, New York, a member of the bar of this Court and the attorney for The Union of Greek Shipowners and Greek Chamber of Shipping respectfully moves this Court for leave to file the accompanying brief *amicus curiae,* in support of the writ of certiorari on behalf of the petitioners.

The S/S Hellenic Hero, a Greek flag vessel registered under Greek law, was operated and controlled by Hellenic

Lines Limited, a 35 year old Greek Corporation all of whose stockholders are Greek citizens. Plaintiff, also a Greek citizen, was a resident and domiciliary of Greece and was employed and boarded said vessel at Greece under a Greek Collective Agreement which dictated submission of shipboard disputes to exclusive Greek Court jurisdiction and exclusive Greek law and contemplated payment to seaman, in the event of injury, of benefits under the Greek law in accordance with the Greek social welfare programs.

The Union of Greek Shipowners, incorporated under Greek law in 1923 with a head office at Athens, is open to membership of Greek owners of vessels of over 4,500 deadweight tons. It has a membership of 175, owning over 6,000,000 gross tons registered under the Greek flag. It is the most representative of Greek owners. The Panhellenic Seamen's Federation, is a Greek corporation consisting of the various Maritime Trade Unions, i.e. the Unions of Masters; Radio officers; Engineers of Internal Combustion Engines; Sailors, Firemen; Stewards and Ship's Cooks. It is the most representative of Greek seamen. Every Collective Agreement, including the one in the present case, is one bargained for and concluded by The Union of Greek Shipowners and the Panhellenic Seamen's Federation. Every Collective Agreement, including the one in the instant case, is approved by the Greek Minister of Mercantile Marine and has the effect of Greek law, binding on owners, masters, officers and crew of all Greek vessels of over 4,500 deadweight tons, even though the shipowner or the master, officers and seamen be not members of The Union of Shipowners or the Panhellenic Seamen's Federation. Thus, The Union of Greek Shipowners and the Panhellenic Seamen's Federation work together to conserve and maintain the primacy of Greek Court jurisdiction and Greek law abroad Greek owned Greek flag vessels. In addition, The Union of Greek Shipowners' interest extends to attend-

ance at International Conferences on questions of safety of human life at sea and the rendition of opinions to the Greek Government on such matters.

The Chamber of Shipping of Greece, a Greek corporation established some 40 years ago with a principal office at Athens, is a judicial person in the area of public law. Its members include all the owners of Greek flag ships, irrespective of size, kind or tonnage, totalling 3001 owners and about 10,364,687 gross tons. It is principally a consultive organization. It advises the Greek Ministry of Mercantile Marine and private industry on shipping, including all questions of seamen employment and labor aboard Greek flag ships. It prepares all kinds of legal and administrative measures affecting ships and shipping, conducts arbitrations of maritime disputes, is represented at International Conferences on shipping, such as safety of human life at sea, load-lines, ship design and equipment, bills of lading, oil pollution, nuclear cargo and insurance, freight rates, conference practices, port development, trade and development, legislation; and publishes a Bulletin quarterly in which shipping questions are discussed. Like The Greek Union of Shipowners and the Panhellenic Seamen's Federation, it has a vital interest that Greek law and the jurisdiction of the Greek Courts, preserved in the Collective Agreements, should exclusively govern personal injury disputes and all other disputes affecting the internal economy and discipline of Greek owned Greek flag vessels.

We respectfully submit that the accompanying brief will perhaps lay more pointed emphasis, than will the immediate parties to this petition, on the assault made below on the concept of international comity as reflected by the venerable and universal rule of maritime law which gives cardinal importance to the law of the flag in the determina-

tion of disputes with respect to the internal economy and discipline of a vessel and the effect of such an assault on the vital interest of a foreign government in, perhaps, its most productive element of commerce.

For the foregoing reasons it is respectfully prayed that this Honorable Court accept the accompanying brief *Amicus Curiae.*

Respectfully,

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New York, New York 10006

IN THE

Supreme Court of the United States

OCTOBER 1969 TERM

No.

HELLENIC LINES LIMITED,

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ZACHARIAS RHODITIS,

Respondent.

BRIEF OF *AMICUS CURIAE* GREEK CHAMBER OF SHIPPING AND THE UNION OF GREEK SHIPOWNERS

Question Presented

The question presented is whether the Jones Act, 46 U. S. C. 688, and the general maritime law of the United States apply to an accident to a Greek seaman on board a ship operated by a Greek corporation and flying a Greek flag solely on the grounds that the accident occurred in an American port, that the principal shareholder of the ship operating corporation, though a Greek citizen, was a resident in America and that the operations of the ship on which the injury occurred were controlled from Amer-

ica,—in view of the numerous and substantial contacts of the vessel, the vessel operator and the plaintiff, himself with Greece, the country of the flag of the vessel, to wit:

(a) that the crewing of the subject vessel and all vessels operated by said corporation takes place in Greece and only Greek seamen are employed,

(b) that most of the vessels operated by said corporation call at Greek ports where they are supplied and repaired.

(c) that two of the four trade routes operated by said corporation do not even touch the United States.

(d) that said corporation was founded in Greece in 1934 by Greek citizens and has continued to exist with home offices in Greece since that time.

(e) that all the stockholders of said corporation are Greek citizens.

(f) that the majority stockholder of said corporation resides in the United States as a representative of Greece to the United Nations.

(g) that the plaintiff seaman is a resident and domiciliary of Greece and has access to a Greek forum.

(h) that the plaintiff seaman signed an employment contract in Greece limiting his rights exclusively to Greek Court jurisdiction and Greek law.

Statement of the Case

The controlling facts in this case are not disputed. For the purpose of this brief we adopt petitioners' statement of facts set out in petitioners' application for the writ of certiorari. The pertinent facts are as set forth in the question noted under the proceeding heading.

ARGUMENT

The writ of certiorari should be granted.

Conflict Between Circuit Courts

The Fifth Circuit's decision in the instant case is in direct and utter conflict with the decision of the Second Circuit in *Tsakonites* v. *Transpacific Carrier Corporation*, 368 F. 2d 426, 2 Cir. 1966, cert. denied 386 U. S. 1007, annexed as petitioner's Appendix C. In both cases the operative facts were identical and the legal issues were the same. The Fifth Circuit expressly recognized this conflict in its opinion:

> "We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles and the plaintiff was a Greek seaman injured in a United States port). *Tsakonites* v. *Transpacific Carriers Corp.*, 2 Cir. 1966, 368 F. 2d 426, cert. denied, 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434. The appellee attempts to distinguish *Tsakonites* on the tenuous ground that at the time of Tsakonites' accident Pericles had not met the residence requirements for United States citizenship, whereas in our case Pericles had fulfilled that eligibility requirement at the time of Zacharias' injury. Casting such finite distinctions aside, we find that we cannot accept the reasoning and conclusion of the *Tsakonites'* majority."

Importance of Question Presented

In determining this petition, the Court need not review factual issues, as the operative facts are not in dispute. What is under inspection is the manner in which the

Fifth Circuit weighed and evaluated these facts against the backdrop of international relations and comity.

The Fifth Circuit pierced the corporate veil of the Greek ship operating company and found that the major stockholder of that corporation, although a Greek citizen, was a resident of the United States. Coupling this residency with the finding of American base of operations of the vessel on which the injury occurred, the Court held that the Greek status of both the ship operating corporation and the flag of the vessel, was sham with the effect that both the corporation and the flag were American. The Fifth Circuit, in so deciding, completely ignored the substantial Greek contacts, not only the offending vessel, the operating company, but of the plaintiff himself, which contacts have been set forth herein under the question presented. It is respectfully submitted that those contacts show that the Hellenic Hero and the ship operating corporation had significantly more than formal business contacts with Greece. Consequently, how could that corporation and the flag of that vessel be considered *non bona fide* and illusory? Be that as it may, no court, other than the Fifth Circuit, has, in a Jones Act situation, pierced a foreign corporate veil to characterize stock ownership and finding same to be non American, gone beyond that by considering stockholder residency or any other matter. While the cases * relied on by the Fifth Circuit teach that beneficial ownership and control of a vessel by *American Citizens or Corporations* will be given absolute legal significance despite schemes, however complex or imaginative,

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* *Bartholomew* v. *Universe Tankships*, 2 Cir. 1959, 263 F. 2d 437, *cert. denied* 359 U. S. 1000. See also *Southern Cross Steamship Co.* v. *Firipis*, 4 Cir. 1960, 285 F. 2d 651, *cert. denied*, 365 U. S. 869; *Pavlou* v. *Ocean Traders Marine Corp.* S. D. N. Y. 1962 211 F. Supp. 320; *Voyiatzis* v. *National Shipping & Trading Corp.*, S. D. N. Y. 1961, 199 F. Supp. 920; *Zielinski* v. *Empress Hondurena de Vapores, S. D. N. Y.* 1953, 113 F. Supp. 93.

to avoid American laws through the formalities of foreign registration and operation, they do not sanction the Fifth Circuit's disregard of the legal significance of ownership and control by admitted *foreign citizens.* Such a process of disregard, it is submitted, is more than a trivial slight to the principles of international comity and to the sensibilities of a foreign sovereign.

In aid of its blatant disregard of admitted foreign citizenship, the Fifth Circuit, as noted above, alludes to the finding that the Hellenic Hero was controlled from an American base of operations. The concept of American "base of operation" was, however, considered by this Court in *Lauritzen* v. *Larsen* (1953) 345 U. S. 571 and given no heed. Respondent there had put stress on the assertion that the petitioner's commerce and contacts with the United States were frequent and regular, thus sustaining a basis for applying the Jones Act. This Court responded that (345 U. S. at 581).

> ". . . (T)he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limits of its powers, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international commerce by sea. Hence the courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."

Moreover, maritime law

> ". . . in such matters as this does not seek uniformity . . . (I)t aims at stability and order through usages which considerations of comity, reci-

procity and long-range interest have developed to define the domain each nation will claim as its own." (345 U. S. at 582).

The idea of doing business in or with the United States is essentially one of fragmented location of that part of foreign commerce between nations.

No case has recognized or held that unequal bargaining power among sovereigns and their nationals or an advantageous trade position of one over the other is a justifiable test or contact to be found or considered in the application of the Jones Act.

The exclusion of such consideration is the recognition that it would be unfair to foreign sovereigns to take their unequal bargaining power or lack of advantageous trade position into account, because at this point in the history, the United States maintains an unequal bargaining power and an advantageous trade position with foreign sovereigns. There was a time, not too many years removed, where the reverse of this situation was true, insofar as the United States was concerned. At that time, foreign sovereigns did not place themselves in a superior position to the United States; at this time the United States has followed the pattern, conduct and courtesy of sovereign powers of recent years.

The severity and international complications of a view contrary to the above cannot be underestimated. The great merchant fleets, passenger and cargo, of sovereign powers trade continuously, systematically and substantially with all the major and minor ports of the United States. Concomitant with this trading, they maintain extensive offices, carry on extensive solicitations and carry on substantial business and financial operations in the United States, indeed far greater than the petitioners here.

Are we to say to the Cunard Line, French Line, Italian Line, Holland-American Line, and others "You are, in effect, American citizens and domiciliaries by reason of your activities in the United States: that you are subject to our laws without reference to your own laws"? These questions answer themselves.

The Fifth Circuit ascribed little significance to the place of contract. This Court did likewise in *Lauritzen* v. *Larsen, supra,* where the place of contract was New York. This Court, however, in *Lauritzen* did say that a law stipulated in a seaman's employment contract should be accorded significance when that law is the same law as the flag of the vessel, this Court stating, at page 345 U. S. 589:

> ". . . the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flagstate as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. The Belgenland, 114 US 355, 367, 29 L ed 152, 156, 5 S Ct 860; The Hanna Nielson (DC NY) 273 F 171. We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship."

In this regard, the Second Circuit in *Tsakonitis, supra,* on the same facts as before the Fifth Circuit, stated:

> "Also not to be ignored, is the fact that this Greek seaman whose residence is in Greece, who is or is not presumed to be familiar with the rights

and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be subject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: 'These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen, in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs.' International comity requires respect for such agreements."

In the instant suit it is clear that it was the intent of the parties as the natural result of their Greek citizenships that Greek law should govern their relationship on a Greek flag vessel. Thus it is submitted that where there is conformity between the law referred to in the contract of employment with what would otherwise be applicable law, the stipulated law is of importance and it has significance in favor of the law of the flag to be applied to the transaction.

Conclusion

It is submitted that the Fifth Circuit's summary disregard of the sanctity of foreign citizenship, both corporate and individual, has rendered an affront to the principles of international comity and to the sensibility of a foreign sovereign. Further, the Fifth Circuit's lack of deference to the nationality of the flag of the Hellenic Hero has not only cast doubt upon the standard upon which the legitimacy of

foreign flags should be judged, but also has jeopardized the most vulnerable and universal rule of Maritime Law which gives cardinal importance to the law of the flag, which rule this Court has said in *Lauritzen*, and recently resaid in *MacCulloch* v. *Sociedad Nacionale d. Marineros de Brazil* (1963) 372 U. S. 10 (not mentioned by the Fifth Circuit), should be given paramount importance with respect to matters affecting the internal economy and discipline of vessels. The drastic consequences of the Fifth Circuit's decision is all the more heightened by the reality that the Second Circuit, on identical operative facts, has come to a diametrical opposed result, a result which upholds the sanctity of foreign citizenship and flag and thus a result which comports with principles of international comity. It is respectfully submitted that this divergent result is one ripe for resolution by this Court.

Dated: New York, N. Y.
this 1st day of October, 1969.

Respectfully submitted,

By JOHN R. SHENEMAN

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Attorneys for Amicus Curiae
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EDWIN K. REID,
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Of Counsel.

Certificate of Service

This is to certify that on the 2nd day of October 1969 copies of the above Application to Appear as Amicus Curiae and Brief in support thereof have been forward to:

George F. Wood of Pillans, Reams, Tappan, Wood & Roberts, Attorney for Petitioners, Hellenic Lines, Limited and Universal Cargo Carriers, Inc., whose consent to file this application has been obtained at his office and post office address, 510 Van Antwerp Building, P. O. Box 2245, Mobile, Alabama 36601.

Joseph B. Stahl, Attorney for Respondent, Zacharias Rhoditis, whose consent has not been obtained, at his office and post office address, Baronne Building, New Orleans, Louisiana 70112.

JOHN R. SHENEMAN